

## **NEW LAW EXPANDS COVERAGE OF 1-YEAR "COOLING OFF" POST-EMPLOYMENT RESTRICTION TO MOST "SENIOR EMPLOYEES"**

**IMPORTANT:** If you currently are a member of the Senior Executive Service (career or non-career) paid at levels ES-1 through ES-4 and are considering post-government employment that would involve interaction with the Department of Agriculture (USDA), you need to be aware of recent legislation that may affect your ability to interact with the USDA within one year of your termination.

**Effective January 11, 2004**, most members of the Senior Executive Service (SES) will become subject to the 1-year post-employment "cooling off" period, under 18 U.S.C. 207(c). This statute bars a former Federal "Senior Employee" from representing another before his or her former agency for a period of one year from termination and covers any particular matter in which the agency has an interest. For USDA "senior employees," this means the entirety of USDA, not just your former component thereof. It also covers all matters before USDA, not just those before your component.

The expansion of coverage came about on November 24, 2003, when the President signed the National Defense Authorization Act for Fiscal Year 2004 (Act), Pub. L. No. 108-136. Section 1125 of the Act abolishes the existing SES compensation scheme (ES-1 through ES-6), as well as locality pay, and establishes a pay-for-performance system consisting of a single pay band. Under section 1125, the "cooling off" period now applies to individuals whose rate of basic pay exceeds 86.5 percent of the rate for level II of the Executive Schedule (EL II). Thus, while the "cooling off" bar currently applies just to ES-5 and 6, as of January 11, 2004, the statute will cover everyone down to and including all those now at ES-2, as well as those at ES-1 in San Francisco.

We will keep affected employees advised about new developments and/or guidance on the matter.

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